

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 14 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ENRIQUE ALBERTO TAVERA TAPIA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-74779

Agency No. A095-313-194

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 17, 2008**

Before: GOODWIN, WALLACE, and RYMER, Circuit Judges.

Enrique Aberto Tavera Tapia, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

from an immigration judge's decision denying his application for cancellation of removal. We dismiss the petition for review.

We lack jurisdiction to review the BIA's discretionary determination that Tavera failed to show exceptional and extremely unusual hardship to a qualifying relative. *See Romero-Torres v. Ashcroft*, 327 F.3d 887, 892 (9th Cir. 2003).

Tavera's contention that the BIA incorrectly applied the legal standard under *Cabrera-Alvarez v. Gonazles*, 423 F.3d 1006, 1012 (9th Cir. 2005), is in effect, a challenge to the BIA's discretionary hardship finding; therefore, we lack jurisdiction. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

We do not consider Tavera's contentions regarding moral character, because his failure to establish hardship is dispositive.

PETITION FOR REVIEW DISMISSED.